

In the United States Court of Federal Claims

No. 13-165C
(Filed: March 27, 2017)

JASON CARL KENNEDY, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

On January 17, 2017, United States Court of Appeals for the Federal Circuit (“Federal Circuit”) issued a decision in which it directed this court to remand the above-captioned case to the Board for Correction of Naval Records (“BCNR”) for further proceedings. See Kennedy v. United States, 845 F.3d 1376, 1383-84 (Fed. Cir. 2017). Specifically, the Federal Circuit provided:

At oral argument, the parties agreed that it is not possible to reconvene the [Performance Review Board (“PRB”)] that met on August 17, 2016, but it is possible for the BCNR to hear the case Mr. Kennedy would have made to the PRB, and to recommend to the Secretary that Mr. Kennedy receive further relief. The proper course therefore is for this court to reverse the judgment that the violation of Mr. Kennedy’s due process rights was harmless and remand the case to the Court of Federal Claims for it promptly to direct the case again to the BCNR, with instructions that the BCNR promptly consider Mr. Kennedy’s case and recommend such further relief for him it deems appropriate.

Id. Accordingly, the court **REMANDS** this case to the BCNR for prompt consideration as directed by the Federal Circuit, and further orders the following:

- Pursuant to Rules 52.2(b)(1)(B) and 6(b)(1)(A) of the Rules of the United States Court of Federal Claims (“RCFC”), the remand period shall terminate on **Wednesday, September 27, 2017**. The court **STAYS** proceedings in the instant case during that time. If the BCNR has not issued a final decision appealable to this court by September 27, 2017, the parties shall follow the procedures set forth in RCFC 52.2(d).

- Pursuant to RCFC 52.2(b)(1)(D), defendant shall file a status report **no later than Tuesday, June 27, 2017**, and then **every month thereafter**, indicating the status of the proceedings before the BCNR.
- When proceedings before the BCNR have concluded, the BCNR shall forward two copies of its decision to the clerk of the United States Court of Federal Claims pursuant to RCFC 52.2(e).
- If the BCNR's decision resolves the case, plaintiff shall file a motion to dismiss the case with prejudice pursuant to RCFC 52.2(e). Otherwise, **within thirty days** of the filing of the BCNR's decision, the parties shall file the notices required by RCFC 52.2(f)(1).

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge